EXHIBIT "K"
(PART I)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF PENNSYLVANIA

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TINA LINDQUIST, :

PLAINTIFF, :

-VS- : CASE NO. 04-249E

HEIM, LP, :

DEFENDANT. :

- - -

Deposition of DENNIS R. CLOUTIER, a witness herein, taken by the plaintiff as upon direct examination pursuant to the Federal Rules of Civil Procedure and pursuant to agreement and stipulations hereinafter set forth at the offices of Dinsmore & Shohl, 1600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio at 8:22 a.m. on Tuesday, April 11, 2006, before Lisa Conley, RMR, CRR, CCP, a notary public within and for the State of Ohio, and by audio/visual means before Marlene Dori, CLVS.

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Q. And, approximately, what time did you meet with Mr. Robinson?

A. I picked him up at his hotel just before 7:00, and we had breakfast together.

Q. Okay. What issues did you discuss?

A. The elements of the case, some of the testimony of Mr. Barnett, some of the evidentiary evidence that has been provided through discovery so far.

Q. What elements, what is your understanding of the elements of this case are?

A. I understand that the major complaint that is being alleged against Heim is the type of foot switch that was on the machine at the time of the occurrence and how the machine was being used.

Q. What type of machine -- Strike that.

What type of foot control was on the Heim machine at the time of this occurrence?

A. It's my understanding it was a Linemaster foot switch.

Q. Do you know what model number?

A. I believe it was a 511, Model 511.

Q. Would you describe what your

understanding is, a Linemaster Model 511 switch is?

A. It's an anti-trip type foot switch, which has a toe release type of mechanism.

Q. What's the purpose of the toe release on the Model 511?

A. The toe release latches the actuating pedal in the up position and requires an operator to insert their foot completely into the foot switch to release the toe latch before operating -- or before depressing the operating lever.

Q. What's the purpose of having a toe latch on that foot switch, if you know?

MR. ROBINSON: Objection to the form.

A. The toe latch is a device that is intended to reduce or minimize the possibility or the probability of inadvertent actuation of the foot switch.

Q. You indicated -- First you said "possibility" and then you said "probability," what was that change about; would you explain to me what inadvertent activation of the foot switch

think the B 11.3 standard provides the needed guidance to make that machine safe for Tina Lindquist on the day of her occurrence.

Q. So your opinion today as it relates to the press brake that was involved with Ms. Lindquist is, your analysis begins and ends with regard to the safety issues with B 11.3?

MR. ROBINSON: Objection to the form.

A. Yes.

Q. Are you aware of any manufacturer at anytime in your 29 plus years with Cincinnati, Incorporated that provided a gated foot control with their press brake?

MR. ROBINSON: Objection to the form.

A. Yes, at various times over the years.

Q. Would you identify what manufacturers you're aware of that provided gated foot controls with their press brakes?

MR. ROBINSON: Object. You mean at anytime?

MR. HARTMAN: During his 29 years.

MR. ROBINSON: Okay. Objection to the form.

BY MR. HARTMAN:

A. I believe Pacific provided a gated foot switch later on. Cincinnati, Incorporated provided gated foot switches. Chicago provided gated foot switches. Amada provided or provides a gated-type foot switch; that's A M A D A. I believe LBD, just the letters L B D, provides a gated-type foot switch; and possibly Trumpf, T R U M P F, provides a gated-type foot switch.

Q. Are you aware of any of the manufacturers of press brakes that you've just named that provided gated foot controls with their press brakes having done so in the period of 1971 to 1982?

MR. ROBINSON: Objection to the form.

A. '71 to '82 would be Cincinnati, Incorporated, it would be Chicago, it would be -- That's all I can think of. I know there was another one out there, I can remember the foot switch, but I can't remember the press brake.

Q. Are you aware of any of the

manufacturers of press brakes that you just enumerated that included gated foot controls with their press brakes still doing so, doing so today?

MR. ROBINSON: Objection to the form.

A. Well, the only two that are left are Pacific and Cincinnati, and both of them do, I believe.

Q. Okay. Are you aware of a press brake manufacturer that offers a gated foot control as standard equipment with their press brakes?

MR. ROBINSON: Objection to the form.

A. I don't know about Pacific, whether it's standard or not. I believe on some Cincinnati machines it's standard.

Q. Do you know why on some Cincinnati machines it would be standard and others it would not be?

A. No.

Q. Have you ever had discussions with the person responsible at Cincinnati as to why they included gated foot controls with their press

brakes?

A. It was a corporate decision made early on to provide that type of foot switch.

Q. Do you know why that decision was made?

A. Yes.

Q. Would you tell us?

A. It was anticipated that it would be a requirement in the B 11.3 standard, and the design was changed to accommodate that anticipated change -- or requirement, I should say, but that requirement never did get into the standard.

Q. But Cincinnati continued to use the gated foot control; am I correct?

A. Yes.

Q. Are you aware of any increase in accidents to the operator of Cincinnati press brakes with the incorporation of the gated foot control?

A. No.

Q. Are you aware of any decrease in the accidents to operators of Cincinnati press brakes with the incorporation of the gated foot control?

A. No.

population of the machines probably half of them.

Q. How would the population of the machines give you rise to an estimate that half of the cases involved foot controls that were gated?

A. Because of the population of machines that had been manufactured by Cincinnati, Incorporated and were out in the field using gated foot controls or using foot-switch type foot controls, half of them were from an era of gated foot controls and half of them were prior to that time.

Q. Okay. When did the era of gated foot controls begin at Cincinnati, Incorporated?

A. 1973.

Q. Did the gated foot controls at Cincinnati, Incorporated include an anti-trip latch?

A. No.

Q. Okay. Have they ever included an anti-trip latch?

A. No.

Q. Do you believe the inclusion of an anti-trip latch on the gated foot control utilized by Cincinnati would add to the safety of the gated

MR. ROBINSON: Objection to the form.

A. Cincinnati made efforts to reduce that probability, yes.

Q. And would you agree, sir, that the reason you reduced that probability of inadvertent activation of press brakes, either by foot control or two-hand control, would be because -- would be so as to protect the operator in the event they're working on a press brake?

MR. ROBINSON: Objection to the form.

A. Yes, yes and no, because, you know, unintended operation of a machine is not a desirable event under any circumstance, so based on that context right there, any measures taken to reduce the possibility of an unintended cycle of a machine goes to an advancement of the overall safety of the operation.

Q. Do you know what HOOD is?

A. Is that with a period after each letter?

Q. Yes.

A. Yes.

out what you know and what you do.

A. I'm sure Ralph probably told you that, though.

Q. We've talked about a lot of things.

Is HOOD feasible for use with power press brakes a hundred percent of the time?

MR. ROBINSON: Objection to the form.

A. Yes.

Q. One hundred percent of the time HOOD is feasible?

MR. ROBINSON: Objection, asked and answered.

A. Yes.

Q. Okay. Can you see situations where HOOD has been applied to the use of a power press brake but the operator still becomes injured at the point of operation?

A. Can I foresee?

Q. Yes.

A. If it's incorporated in the operation of the machine, no, there's no way that I could predict that that would happen.

Q. What happens if there's a failure in

the HOOD process, meaning let's say would one of the ways be a light current that you could achieve HOOD?

MR. ROBINSON: Objection to the form.

A. No.

Q. A light current does not -- is not a HOOD mechanism?

A. There is, there is no HOOD mechanism. HOOD is a philosophy. HOOD is a way of operating these machines that says design the dies, design the operation, design the particular part so the operator does not have to reach between the dies to load the part or to remove the part or to in any way form the part.

Q. Would you agree that there are also numerous ways that operators interact with machines where they do have their hands in the die area and it's understood by the industry that operators will have their hands in the die area?

MR. ROBINSON: Objection to the form.

A. Which industry are you talking about? Are you talking about in general; yes.

Q. Press brake industry.

A. Oh, press brake industry.

MR. ROBINSON: Same objection.

A. Yes.

Q. So the press brake industry understands that operators will work with their hands in the die area; am I correct?

MR. ROBINSON: Objection to the form.

A. I believe that's a fair evaluation, that that acknowledgment or recognition is there. It does nothing to diminish the need to continue to promote hands off die operation.

Q. And I understand that the hands out of die operation is something that the industry is promoting, but I need to know what they understand actually happens at the ground level with operators of press brakes.

Am I correct, sir, that the press brake manufacturers know that operators will work with their hands in the die area of press brakes?

MR. ROBINSON: Objection to the form.

A. Yes, I believe that's a fair

A. Yes.

Q. Are you aware that industry-wide it's known that operators of press brakes will have injuries to their hands and fingers at the point of operation while operating press brakes?

A. Yes.

MR. ROBINSON: Objection.

Q. Would you agree, sir, that that knowledge of injuries happening to the hands of operators operating power -- press brakes would allow you to make a determination that those operators are not using point of operation safety mechanisms?

MR. ROBINSON: Objection to the form.

A. No.

Q. What does that information allow you to conclude?

A. That individuals are getting injured at the point of operation.

Q. Okay. How are they getting injured?

A. That's what the investigation is all about, to determine how the injuries are taking place.

Q. Well, have you ever investigated accidents involving point of operation -- injuries at the point of operation by press brake operators where there was no HOOD procedure in place and no point of operation protection?

A. Yes.

Q. How many times?

A. I have no recollection.

Q. Can you give me an estimate?

A. No.

Q. Can you tell me how long ago it was?

A. I believe my earliest accident investigation was in 1976, '75 maybe, yeah, that's the earliest one.

Q. So was that investigation involving an operator who injured his or her hands at the point of operation while using a press brake where there was no point of operation protection?

A. No. There was protection in place.

Q. How did the operator get injured in that situation, if there was protection in place?

A. Somebody else operated the controls, that I recall.

Q. Would you agree, sir, that operators

are known to have been injured at the point of operation while operating a press brake where there's been a HOOD procedure in place?

MR. ROBINSON: Objection to the form.

A. I can't, I cannot respond specifically yes, but over the years, I would -- I can't imagine that I have not investigated an accident where the employer had incorporated a hands out of die practice, but I can't specifically name one.

Q. Okay. Have you ever investigated an accident where the operator was injured while operating a press brake at the point of operation when the point of operation mechanism failed and that was the cause of the injury?

MR. ROBINSON: Objection to the form.

A. No.

Q. Have you ever operated point of operation failure causing injury to an operator of a press brake?

MR. ROBINSON: Objection to the form.

control to be provided as standard equipment?

MR. ROBINSON: Objection to the form.

A. I don't know what you mean by "proper." Most OEMs, if they provide a foot control, make the selection based upon what's available from the suppliers of those types of foot controls.

Q. OEM is what?

A. Original equipment manufacturer.

Q. So Cincinnati, if they're manufacturing a press brake, makes the selection of the foot control to be supplied with its press brake?

MR. ROBINSON: Objection to the form. Are you asking at all times?

MR. HARTMAN: When it's supplied as standard equipment, yes.

MR. ROBINSON: I just want to make sure I understood. That could be read a couple of different ways. Objection to the form.

BY MR. HARTMAN:

A. With regard to Cincinnati, Incorporated and it providing foot controls on its

the foot control that it supplied with its press brake?

MR. ROBINSON: Object to the form.

A. I've not seen any evidence either way on that.

Q. Okay. Well, did you read the manual and the parts book that came with the Heim?

A. Yes, I did, I believe.

Q. Okay. Do you recall where it said it supplied a foot control as standard equipment with the press brake?

A. Yes.

Q. Would that indicate to you that Heim supplied a foot control as standard equipment with the press brake involved in this accident?

MR. ROBINSON: Objection to the form.

A. A foot control, yes.

Q. Did you see anywhere in the materials where Heim indicated that the purchaser had the right or the opportunity to select a foot control for the press brake?

MR. ROBINSON: Objection to the form.

A. I didn't see either way, one way or the other.

Q. Didn't speak to it at all in the materials?

A. I don't remember seeing anything that spoke to it.

Q. And on the first page of your March 15th, 2006 report, you indicate that you "relied upon 30 years in the machine tool industry and referencing appropriate governmental regulations and industry standards relative to the activity taking place and equipment in use at the time"; am I correct?

A. Yes.

Q. Okay. The industry standards relative to the activity taking place, would that be the ANSI B 11.3 standard?

A. Yes.

Q. Are there any other standards that you relied upon relative to industry standards?

A. No, not that I can recall at this time.

Q. And you indicate that the government regulations, would that be the OSHA regulations in

Q. Do you know how many pieces of sheet metal in a day?

A. No.

Q. Would Avco-Lycoming be putting that press brake to a general use?

A. From my experience at Avco-Lycoming, my opinion would be that they would probably be using it in a maintenance function.

MR. ROBINSON: In what, sir, I'm sorry?

THE WITNESS: A maintenance function.

BY MR. HARTMAN:

Q. And what would a maintenance function be?

A. The machine located in the maintenance department where maintenance workers would fabricate various components or pieces out of sheet metal for application and repair operations within the facility.

Q. Would you agree, sir, that they would be using it for a wide breadth of uses in the maintenance department?

A. Oh, absolutely, yes.

verified that it was operating properly in all respects and the only way that the machine could have cycled is if Ms. Lindquist depressed the foot switch.

Q. Do you agree with the conclusion -- Strike that.

Do you agree with the statement that the only way this machine could have cycled is by activation of the foot switch?

A. Yes, I do. There's a possibility -- or a probability, excuse me, of a phantom cycle, but these machines don't generally phantom cycle without something breaking, and when something breaks, it's generally discovered in an investigation following that breakage and that phantom cycle.

Q. You have no evidence that something broke; am I correct?

A. Correct.

Q. And the only evidence that exists as of this date is that the machine was operating by using a foot control?

A. And properly in all respects.

Q. And that activation of the foot

it is possible that it could have taken place with Tina Lindquist. I just want to make sure that it's not misleading, as it sounds.

MR. HARTMAN: It's not misleading. It's absolutely crystal clear that I used Tina Lindquist. There's no, there's no -- It's a different question. The witness has the ability to think and hear my questions, and if he has problems with the questions, he can certainly straighten me out, as he's done on several occasions, specifically when I misstated the number of years.

I have no problem in restating anything you ask me to restate, sir.

BY MR. HARTMAN:

Q. Is it possible that Ms. Lindquist could have been injured performing the same functions she did on the day of the accident with a two palm button switch as the point of operation safety?

A. Not injured in the same manner. I can -- Not knowing the stopping ability of this particular machine, how long it takes it to stop, there is the potential for the hand to get off of

a palm control and into a hazardous area before the ram has an opportunity to completely stop and result in an injury. That is a very low probability because of the short stroke of this machine being less than -- only 3 inches of total stroke.

I doubt seriously if she could have gotten off of a hand control and into a hazardous area fast enough to get herself injured. She certainly could not have gotten both hands in the point of operation if she were using palm button controls to form this particular part.

Q. There are situations where people have been injured by secondary activation by a co-employee, though; am I correct?

A. That's correct.

MR. ROBINSON: Objection, argumentive.

A. But that is the scenario most often experienced when palm buttons are used as point of operation safeguarding. It's not the people who are operating the palm buttons, but it's somebody else who is getting hurt.

Q. It happens when there is concurrent

simultaneous; is there not?

A. Yes.

Q. Okay. The difference as you understand it to be is simultaneous means to you less than .5 seconds between the depression of the pedals -- the palm buttons on a two palm button switch; am I correct?

A. Yes, it could be palm button stations, yes.

Q. Concurrent means a time greater than .5 seconds with regard to --

A. It doesn't have to.

MR. ROBINSON: Objection.

A. No. It could be greater, it could be less.

Q. But it would -- But concurrent includes the permission to allow it to be greater, whereas, simultaneous says it must be less than .5 seconds, to you?

A. Yes. But show me where that's required in any standard, Mr. Hartman.

Q. Sir, I'm not --

A. What I feel --

Q. I'm not the witness today.

Q. And you indicate that, approximately, 200 parts were being formed?

A. That's what I gleaned from the testimony.

Q. Is your understanding of the job that Ms. Lindquist was performing on the day of her accident a job that you would typically expect to be performed by press brakes?

MR. ROBINSON: I'll object to the form of the question.

A. I can't really say. I've not seen the actual part, drawing of the part or the actual shape of the part at the beginning or at the end. My presumption was that the part was a flat blank to begin with and that it was a round cylinder when it finished the four operations. Whether that could be done on some type of other machine, I've not had the opportunity to make that evaluation.

Q. But my question is -- Let me be a little bit more clear. Would you agree, sir, that the forming of the parts as you understand them to be formed would be a use of the press brake that was expected?

MR. ROBINSON: I'll object to the form of the question.

A. Yes, it could very well be; although, I don't, I don't know what the butterfly operation encompassed. I didn't see any specific information in the testimony describing that.

Q. How about the final forming the piece on the mandrel and letting the press interface with the piece then to make it a complete cylinder, is that something that you would expect a press brake to be utilized in doing?

A. Yes. I've seen that type of forming work on press brakes in the past.

Q. The next paragraph, you indicate, "Forming of the cylindrical shape required the operator to manually preform the part around the mandrel." Is that an accurate statement?

A. Yes, that's what I said there.

Q. Do you still hold true to that?

A. That's the way I understand what was happening from the testimony I reviewed.

Q. "This pre-forming was accomplished on the actual mandrel which served as the lower

half of the forming die set while it was position in the machine"; am I correct?

A. Yes.

Q. Do you still hold to that statement?

A. I have not received any information to contradict that from the testimony I've reviewed.

Q. Your next sentence is: "Therefore it was necessary for Ms. Lindquist to place her hands between the upper and lower die to fit the part around the mandrel"; is that an accurate statement?

A. Yes.

Q. And you still believe that to be true?

A. Yes.

Q. Do you know the capacity of the press brake involved in this accident?

A. My understanding, it was a 70-ton capacity machine.

Q. Do you know how many parts it could form in a day or is there any way to determine that or how many parts would you expect to be formed in a day?

MR. HARTMAN: That's fine.

MR. ROBINSON: When you read it and you say "correct," I don't know what that means. It's not really a question.

BY MR. HARTMAN:

Q. It says: "The press brake was set up by Corry employee Robert Rooney. Mr. Rooney would change dies for each of the four operations on the part after the operator completed each previous operation on the entire lot." Did I correctly read your statement?

A. Yes.

Q. Do you still hold true to that opinion after reviewing the evidence?

A. Yes.

MR. ROBINSON: Let me object to the reference to the term opinions, but --

Q. Okay. Is that accurate still today?

A. This is the information -- I've not received any information to contradict that statement.

Q. This is the information that you're utilizing to make your opinions, though, correct?

A. The information here is from what I

learned reading the discovery information.

Q. But this is your understanding of what you've learned in reading the discovery information that you're relying upon to make your opinions in your report; am I correct?

A. Yes.

Q. Let's go down to the next sentence. It says: "With the final die set in the machine to make the round shape, the distance between the upper and lower die components is estimated to be approximately 2-and-one-quarter inch. This is the space within which the operator had to place the" parts -- "the part and preform it around the mandrel," and then have you in parentheses, "with her hands" close paren, period. Did I accurately read that statement?

A. Yes.

Q. Is that the information that you pulled out of the materials sent to you by Mr. Robinson that you utilized to make your opinion?

A. Except for the estimate, that estimate was my own conclusion based upon the material I read.

Q. But these are the facts that you relied upon in making your -- reaching your conclusions, correct?

A. I don't understand what you're asking.

Q. This is your understanding as to what happened on the day of the accident --

A. What Ms. Lindquist was doing at the time.

Q. -- and what Ms. Lindquist was doing and what her responsibilities were for you to formulate your opinions; am I correct?

A. Yes.

Q. Next it indicates that: "Ms. Lindquist was positioned in front of the press brake with a tray of parts to her side. She had positioned the foot switch operator control between her and the front of the machine. A stool was positioned behind her." Did I accurately read your report?

A. Yes.

Q. Are those the facts that you pulled from the discovery materials sent to you by Mr. Robinson upon which you relied upon in making

your opinion?

A. Yes.

Q. It's your understanding that there was a stool at the point of operation; am I correct?

A. No.

Q. There was a stool positioned behind her?

A. Yes.

Q. Do you find any fault with having a stool located in proximity to Ms. Lindquist while she's operating the press brake?

A. No.

Q. You indicate that the foot switch operator control was between her and the front of the machine; am I correct?

A. Yes.

Q. Do you find any fault with the location of the foot control as it being placed between Ms. Lindquist and the machine?

A. No.

Q. Is that something that you would expect a typical operator to do when operating a press brake?

A. Yes.

Q. Let's go to the next paragraph, please. It says, "Ms. Lindquist testified that she did not activate the foot switch," correct?

A. Yes.

Q. You disagree with that; am I correct?

A. Yes.

Q. You believe that she did activate the foot switch?

A. Yes.

Q. Do you agree that it was an inadvertent activation of the foot switch?

A. Yes.

Q. There's nothing to indicate that she intended to activate the foot switch with her hands in the machine; is there?

A. Yes -- No, correct.

Q. You don't believe that she intended to do this; am I correct?

A. I have no information to determine that one way or another.

Q. You indicate that, "Other Corry employees testified that Ms. Lindquist had to be